

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

WITH

C & M INDUSTRIES, INC.

SECTION A: Purpose

This is a special order by consent issued under the authority of Sections 62.1-44.15(8a) and (8d), and Section 62.1-44.34:20 of the Code of Virginia between the State Water Control Board and C & M Industries, Inc. to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 62.1-44.7 and 10.1-1184.
3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Tidewater Regional Office of DEQ.
6. "Order" means this document, also known as a consent special order.
7. "C & M Industries" means C & M Industries, Inc. a Virginia corporation.
8. "Regulations" means 9 VAC 25-101-10 *et seq*, the Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Regulation.

SECTION C: Findings of Facts and Conclusions of Law

1. Section 62.1-44.5(A) of the Code prohibits discharges to State waters except in compliance with a certificate issued by the Board. Section 62.1-44.34:18 of the Code prohibits the discharge of oil into or upon state waters, lands, or storm drain systems. Section 62.1-44.34:19 of the Code requires the reporting of any oil discharges which may reasonably be expected to enter State waters, lands, or storm drain systems.
2. Section 62.1-44.34:15 of the Code and Section 9 VAC 25-101-40 of the Regulations require operators of tank vessels to file oil discharge contingency plans (ODCPs) with DEQ. Section 62.1-44.34:16 of the Code and Section 9 VAC 25-101-50 of the Regulations require operators of tank vessels to maintain evidence of financial responsibility.
3. C&M Industries operates Barge B-1. The B-1 barge is a regulated tank vessel as defined by the Code and the Regulation.
4. On October 31, 2001, Barge B-1 was offloading fuel oil from the USS San Jacinto which was in drydock at the Metro Machine yard in Norfolk, VA. The B-1, which was under charter to and being towed by another company, was to transport the fuel from Metro to the Navy's Craney Island Fuel Facility.
5. A concealed and unmarked I-beam protruding from the drydock below the waterline ripped a three inch gash in the mid-port side cargo tank of Barge B-1 when the Barge was pulled away from the drydock by the tugboat.
6. C&M and its contracted Oil Spill Response contractor immediately responded to the release, boomed off the barge and drydock, and implemented its Coast Guard-approved Vessel Response Plan.
7. From tank soundings, it is estimated that approximately 8,500 gallons of fuel oil was discharged from the Barge into the water.
8. C & M Industries maintains that all but 157 gallons of the oil was recovered.
9. At the time of the spill, Barge B-1 had not filed and did not have an approved ODGP with DEQ. In addition, at the time of the spill, Barge B-1 was not in compliance with the financial responsibility requirements of the Regulation. Barge B-1 did have a U.S. Coast Guard-approved Vessel Response Plan, and was in compliance with the federal financial responsibility requirements for tank vessels.
10. Notice of Violation No. 02-01-TRO-001 was issued to C & M Industries on January 15, 2002 for the unpermitted discharge of oil, for failing to comply with Virginia financial responsibility requirements and for failing to have an approved ODGP.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Code §§ 62.1-44.15(8a) and (8d), and § 62.1-44.34:20 orders C & M Industries, and C & M Industries voluntarily agrees, to perform the actions described in Appendix A and B of this Order. The Board also orders C & M Industries, and C & M Industries voluntarily agrees to pay a civil charge of \$42,000 in settlement of the violations cited in this Order.

1. \$12,000 of this civil charge shall be paid within 30 days of the effective date of this Order. The payment shall note that it is being made pursuant to this Order and shall include C & M Industries Federal Identification Number. Payment shall be made by check payable to the "Treasurer of Virginia" delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

2. \$30,000 of this civil charge shall be satisfied upon completion by C & M Industries of a Supplemental Environmental Project ("SEP") pursuant to Virginia Code § 10.1-1186.2 and as described in Appendix B of this Order.
3. In the event that the SEP is not performed as described in Appendix B, upon notification by DEQ, C&M Industries shall pay the amount specified in Paragraph 2 above, within 30 days of such notification according to the procedures specified in Paragraph 1 above.
4. In addition, C & M Industries, pursuant to Code § 62.1-44.34:18(C)(1) shall pay by separate check the amount of \$221.00 to reimburse the Commonwealth for the costs and expenses incurred by the Commonwealth for investigation of this incident. This check should indicate "VPSTF cost recovery" on the memo line and shall include C & M Industries Federal Identification Number. The check shall be submitted to the address in Paragraph 1 above, within 30 days of the effective date of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of C & M Industries, for good cause shown by C & M Industries, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to C & M Industries by DEQ cited

above. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, C & M Industries admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. C & M Industries consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. C & M Industries declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by C & M Industries to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. C & M Industries shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. C & M Industries shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. C & M Industries shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which C&M Industries intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and C & M Industries. Notwithstanding the foregoing, C & M Industries agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to C & M Industries. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve C & M Industries from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, C & M Industries voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2004

Francis L. Daniel, Tidewater Regional Director for
Robert G. Burnley, Director
Department of Environmental Quality

C & M Industries, Inc. voluntarily agrees to the issuance of this Order.

By: _____
Earl W. Edwards III, Vice President

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _ day of

_____, 2004, by Earl W. Edwards III who is Vice President of C&M Industries, Inc., on
behalf of the Corporation.

Notary Public

My commission expires: _____.

APPENDIX A

C & M INDUSTRIES, INC.

C & M Industries shall:

1. Mail all submittals and reports required by this Appendix A to:
Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462
2. Notify DEQ of any oil spills in accordance with the approved ODCP and Virginia Code §62.1-44.34:19.
3. Notify DEQ of any newly acquired tank vessels 30 days prior to transporting oil in them and ensure that all newly acquired vessels are in full compliance with the Regulations prior to transporting oil in them.

APPENDIX B

C & M INDUSTRIES, INC. – SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. The supplemental environmental project ("SEP") to be performed by C & M Industries is the construction of a new oyster reef in the Southern Branch of the Elizabeth River. The project will be coordinated and directed by the Elizabeth River Project. The reef will be located on the shores of Norshipco, a private ship repair facility located at 750 West Berkley Avenue, in Norfolk, Virginia. It will be adjacent to a 250' successfully restored smooth cordgrass (*Spartina alterniflora*) wetland. The site has been evaluated by marine scientists from the Virginia Marine Resources Commission (VMRC) and the Chesapeake Bay Foundation and has been found to be ideal for an oyster reef restoration project in terms of site location and tidal conditions. Approximately 1,075 cubic yards of oyster shells (16,667 bushels) will be deposited on the site by barge. The barging and deposition of the oyster shells will be handled by the VMRC. The Chesapeake Bay Foundation will seed the site with oyster spat.
2. The SEP shall be completed by October 1, 2004.
3. C & M Industries certifies that it has not commenced performance of the SEP prior to the identification of the violations cited in this Consent Order and the approval of the SEP by DEQ.
4. C & M Industries consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The net cost of the SEP to C & M Industries shall be not less than \$30,000. In the event that the final cost of the SEP is less than this amount, C & M Industries shall pay the remainder of the amount to the Commonwealth of Virginia, unless otherwise agreed to by DEQ. Net costs shall mean the costs of the project minus any tax savings or grants.
6. C & M Industries acknowledges that it is solely responsible for completion of the SEP. Any delegation of funds, tasks, or otherwise by C & M Industries to a third party, shall not relieve C & M Industries of its responsibility to complete the SEP as contained in this Order.
7. All State and Federal permits required for the completion of the SEP shall be obtained prior to the initiation of the SEP.
8. C & M Industries shall provide DEQ with written verification of completion of the SEP by providing a statement of completion by November 1, 2004.
9. C & M Industries shall submit verification to DEQ in the form of invoices of the final overall cost of

the SEP by December 31, 2004.

10. In the event that C & M Industries publicizes the SEP or the results of the SEP, C & M Industries shall state in a prominent manner the project is part of a settlement for an enforcement action.
11. DEQ has the sole discretion to determine whether the SEP has been completed in a satisfactory manner.